

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUANITA GARCIA, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NATIONSTAR MORTGAGE LLC, a Delaware
Limited Liability Company,

Defendants.

Case No. 2:15-cv-01808-TSZ

CLASS MEMBER SHERLIE CHARLOT'S
JOINDER IN PLAINTIFF'S STATEMENT
REGARDING SCOPE OF RELEASE IN
PROPOSED CLASS ACTION SETTLEMENT

ORAL ARGUMENT REQUESTED

JOINDER IN PLAINTIFF'S STATEMENT
RE: SCOPE OF RELEASE
(Case No. 2:15-cv-01808-TSZ)

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Tel.: (206) 623-1900
Fax: (206) 623-3384

1 Sherlie Charlot, a class member, joins in Plaintiff Juanita Garcia's Statement Regarding Scope of
2 Release in Proposed Class Action Settlement ("Statement"), Dkt. No. 114. Ms. Charlot additionally and
3 respectfully asks the Court to enter an order making Plaintiff's Statement binding on all of the parties.

4
5 Doing so is necessary to protect Ms. Charlot's rights that she is presently attempting to vindicate
6 in class action litigation against Defendant Nationstar Mortgage LLC ("Nationstar"). Class Action
7 Complaint ("Compl."), *Contreras v. Nationstar Mortg. LLC*, No. 2:16-cv-00302-MCE-EFB (E.D. Cal.
8 Feb. 12, 2016), Dkt. No. 1. Like Plaintiff Garcia, Ms. Charlot sued Nationstar for wrongly assessing
9 convenience fees on mortgage payments she has made. Ms. Charlot and other co-plaintiffs seek to
10 represent a nationwide class and certain subclasses of similarly situated borrowers who have been
11 charged convenience fees from 2011 to the present. *See id.* Ms. Charlot and the other *Contreras*
12 plaintiffs also seek relief for additional types of fees not at issue in the *Garcia* matter.

13
14 Given the overlap between these two cases, Ms. Charlot has concerns that the Settlement
15 Agreement in *Garcia* threatens to impair and impede her and the proposed classes' rights in the
16 *Contreras* case. Ms. Charlot believes the release could be read to force her and all *Contreras* class
17 members who are also members of the *Garcia* class to forever abandon their ability to challenge the
18 convenience fees (even if charged outside the *Garcia* class period), as well as other types of fees that
19 Nationstar has charged. *See* Stipulation and Settlement Agreement ("Settlement Agreement") § 10.1 and
20 § 10.5 (Dkt. No. 92-1). Indeed, Nationstar's counsel has represented to the undersigned counsel for the
21 plaintiffs in *Contreras* that Nationstar intends to read and apply the Settlement Agreement's Release in
22 just such a broad manner. *See* Declaration of Ian Mensher in Support of Ms. Charlot's Joinder
23 ("Mensher Decl.") ¶ 9.

24
25 Ms. Garcia's counsel has kindly worked with Ms. Charlot's counsel to address Ms. Charlot's
26 concerns. The Statement is proof of that cooperation. As Ms. Garcia explains, through the Statement

1 “the Parties . . . further clarify the plain and intended meaning of the Settlement and Release” to
2 preserve the *Contreras* plaintiffs’ ability to pursue individual and class claims for all convenience fees
3 paid outside of the *Garcia* class periods and for all non-convenience fees they have been assessed. *See*
4 Statement ¶¶ 2-5. The Statement also clarifies that the “*Garcia* Parties have no objection” to the
5 *Contreras* plaintiffs’ decision to opt-out of the *Garcia* class and “those individuals shall not be deemed
6 to have waived any claims.” *Id.* ¶ 6.

7
8 While the Statement provides the foundation to allay Ms. Charlot’s concerns in terms of what the
9 “Parties” have agreed to, it presently lacks any binding effect against Nationstar given Nationstar’s
10 refusal to actually join and sign it. *See* Mensher Decl. ¶ 11. Indeed, Nationstar’s Statement of
11 Nonopposition to the Statement does not contain any agreement to be bound by the Statement. *See* Dkt.
12 No. 115. This greatly concerns Ms. Charlot because of Nationstar’s stated views on the reach of the
13 Settlement Agreement’s Release. *See id.* ¶ 9. Nationstar appears to be preserving its ability to use the
14 Release broadly against Ms. Charlot. This would undermine Ms. Charlot’s and the *Contreras* plaintiffs’
15 claims and prejudice her and the classes she and her co-plaintiffs seek to represent.

16
17 To ensure the fairness of this settlement and avoid prejudice to Ms. Charlot and others similarly
18 situated, the Court may and should enter an order adopting the Statement as *binding on all parties*.
19 Doing so is consistent with the Statement and Rule 23(e) because it would ensure the settlement in this
20 matter is “fair, reasonable, and adequate.” *See* Fed. R. Civ. P. 23(e)(2); *see also Churchill Vill., L.L.C. v.*
21 *Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (listing eight factors the Court must review to test the
22 fairness of a settlement, which includes “the reaction of the class members of the proposed settlement.”).
23 Ms. Charlot therefore respectfully requests the Court enter an order making the Statement binding on the
24 *Garcia* parties, in the form provided by Ms. Charlot with this joinder.

1 Ms. Charlot's counsel will be present at the Final Approval Hearing to answer any questions the
2 Court may have. For the sake of clarity (and consistent with Ms. Charlot's proposed order), Ms. Charlot
3 requests to be excluded as a class member, a point on which the parties appear in agreement. *See* Dkt.
4 Nos. 114 and 115.
5

6
7 RESPECTFULLY SUBMITTED this 16th day of October, 2018.

8 By s/ Ian Mensher
9 s/ Derek W. Loeser
10 s/ Dean Kawamoto
11 s/ Gretchen S. Obrist
12 Derek W. Loeser, WSBA #24274
13 Dean Kawamoto, WSBA #43850
14 Gretchen S. Obrist, WSBA #37071
15 Ian Mensher, WSBA #39593
16 KELLER ROHRBACK L.L.P.
17 1201 Third Ave, Suite 3200
18 Seattle, WA 98101-3052
19 Tel.: (206) 623-1900
20 Fax: (206) 623-3384
21 E-mail: dloeser@kellerrohrback.com
22 dkawamoto@kellerrohrback.com
23 gobrist@kellerrohrback.com
24 imensher@kellerrohrback.com

25 By s/ Thomas E. Loeser
26 Thomas E. Loeser, WSBA #38701
27 HAGENS BERMAN SOBOL SHAPIRO LLP
28 1301 Second Avenue, Suite 2000
Seattle, WA 98101
Tel.: (206) 623-7292
Fax: (206) 623-0594
E-mail: toml@hbsslaw.com

Attorneys for Sherlie Charlot

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on October 16, 2018, I electronically filed the foregoing with the Clerk of
3 the Court using the CM/ECF system, which in turn sent notice to the following counsel of record:

4 Benjamin H. Richman
5 EDELSON PC
6 350 N. LaSalle Street, 14th Floor
7 Chicago, IL 60654
8 Tel.: (312) 589-6377
9 Email: brichman@edelson.com

10 D. Frank Davis
11 Wesley W. Barnett
12 DAVIS & NORRIS LLP
13 2154 Highland Avenue South
14 Birmingham, AL 35205
15 Tel.: (205) 930-9900
16 Email: fdavis@davisnorris.com
17 wbarnett@davisnorris.com

18 Rafey S. Balabanian
19 EDELSON PC (SF)
20 123 Townsend Street, Suite 100
21 San Francisco, CA 94107
22 Tel.: (415) 212-9300
23 Email: rbalabanian@edelson.com

24 Clifford A. Cantor
25 627 208th Avenue SE
26 Sammamish, WA 98074-7033
27 Tel.: (425) 868-7813
28 Email: cliff.cantor@outlook.com

Attorneys for Plaintiffs

Erik Kemp
Kalama M. Lui Kwan
SEVERSON & WERSON
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
Tel.: (415) 398-3344
Email: ek@severson.com
kml@severson.com

John Alan Knox
WILLIAMS KASTNER
Two Union Square
601 Union Street, Suite 4100
Seattle, WA 98101
Tel.: (206) 628-6600
Email: jknox@williamskastner.com

Attorneys for Defendants

23 *s/ Ian Mensher*
24 _____
25 Ian Mensher
26

27 4830-3885-2728, v. 1

28 JOINDER IN PLAINTIFF'S STATEMENT
RE: SCOPE OF RELEASE - 4
(Case No. 2:15-cv-01808-TSZ)

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Tel.: (206) 623-1900
Fax: (206) 623-3384